

PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

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JENNIFER RUHLE

December 16, 2015

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Megna, Executive Director
New York State Thruway Authority
200 Southern Boulevard
P.O. Box 189
Albany, New York 12209-0189

Tappan Zee Constructors, LLC
c/o Corporation Service Company
80 State Street
Albany, New York 12207-2543

**Re: Notice of Intent to Sue for Violations of New York State DEC
Permit ID 3-9903-00043/00013 and the Clean Water Act**

Dear Sirs and Madams:

This letter constitutes Riverkeeper's 60-day NOTICE OF INTENT TO SUE the New York State Thruway Authority ("NYSTA") and Tappan Zee Constructors, LLC, as permittee and contractor, respectively, responsible for project activities at or around Hudson River Mile 27 (measured from the Battery at the southern tip of Manhattan) on the East and West sides of the River in connection with the New NY Bridge Project, that are not in compliance with New York State Department of Environmental Conservation ("NYSDEC") Permit ID 3-9903-00043/00013 (the "NNYB 401 WQC"), and therefore, not in compliance with the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et. seq. (2012).

Riverkeeper, Inc. ("Riverkeeper") is a not-for-profit environmental watchdog organization headquartered at 20 Secor Road, Ossining, New York 10562, (914) 478-4501, that protects and safeguards the ecological integrity of the Hudson River and its watershed. On behalf of its members, Riverkeeper routinely files citizen suits under the CWA to enforce permits and to prevent and remediate environmental pollution problems. Many of Riverkeeper's members and constituents live near and routinely recreate in and on the Hudson River. Riverkeeper is represented in this matter by the Pace Environmental Litigation Clinic, Inc., 78 North Broadway, White Plains, New York 10603, (914) 422-4343.

BACKGROUND

The New NY Bridge Project consists of constructing a dual-span bridge over the Hudson River at the Tappan Zee, connecting Rockland and Westchester Counties, and demolishing the existing Tappan Zee Bridge. On March 25, 2013, NYSDEC issued the NNYB 401 WQC (*see* Exhibit 1). The NNYB 401 WQC regulates the NYSTA's project activities, and requires the NYSTA to protect water quality, including compliance with New York State water quality standards during the construction project.

LEGAL STANDARD

CWA § 505, 33 U.S.C. § 1365, permits any citizen to bring a civil action against any person who is alleged to be in violation of an effluent standard or limitation or an order issued by the Administrator or State with respect to such a standard or limitation. Riverkeeper intends to sue NYSTA and Tappan Zee Constructors, LLC for violations of specific conditions of the NNYB 401 WQC relating to turbidity within the Hudson River. Each instance of non-compliance with the NNYB 401 WQC constitutes a separate and independent violation of CWA sections 401, 404, and 301(a), and constitutes a violation of an effluent standard or limitation as defined in CWA section 505(f). 33 U.S.C. §§ 1311(a), 1341, 1342, 1344, 1365(f).

CWA § 404 requires that a project sponsor obtain a dredge and fill permit—typically referred to as a Section 404 Permit—issued by the Army Corps of Engineers for any activities that may discharge dredged or fill material into navigable waters. 33 U.S.C. § 1344. Because the New NY Bridge Project includes a dredging component and other activities that result in discharges of dredged materials and other pollutants to navigable waters, NYSTA applied for and has obtained a Section 404 Permit (“NNYB Section 404 Permit”). CWA § 401, 33 U.S.C. § 1341, requires an applicant for a Section 404 Permit to first obtain a Section 401 Water Quality Certification from the state in which the discharge originates. General Condition 5 of the NNYB Section 404 Permit states, “[i]f a conditioned Section 401 of the [CWA] water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.” Additionally, the NNYB Section 404 Permit “Project Description” states, “[a]ll work shall be performed in accordance with ... [the] New York State Department of Environmental Conservation issued Section 401 of the Clean Water Act Water Quality Certificate Numbered 3-9903-00043/00013 dated March 25, 2013, including any future amendments; all of which are hereby made part of this permit.” Therefore any violations of the NNYB 401 WQC also constitute violations of the NNYB Section 404 Permit.

CWA § 301(a) states, “[e]xcept as in compliance with this section and sections ... 1344 [CWA § 404] of this title, the discharge of any pollutant by any person shall be unlawful.” Because NYSTA is violating the NNYB Section 404 Permit, as discussed above, its

activities constitute discharges of pollutants not in compliance with CWA § 404, and are therefore violations of CWA § 301(a) as well.

NYSTA is directly liable as the permittee for all violations alleged herein. Tappan Zee Constructors, LLC are liable as NYSTA's agents and contractors pursuant to the explicit terms of the NNYB 401 WQC and NNYB Section 404 Permit.

VIOLATIONS

Violations of Section 401 Water Quality Certification

The NNYB 401 WQC repeatedly reflects the narrative water quality standard for turbidity in New York State, 6 NYCRR § 703.2, which prohibits any “increase [of turbidity] that will cause a substantial visible contrast to natural conditions.”¹ Condition 61 of the NNYB 401 WQC includes a table of water quality standards that must be achieved “at the edge of the 500-foot mixing zone around the *activities identified in condition 59*.” (emphasis added). Condition 59 makes clear that these water quality requirements apply with respect to “any activity that may cause resuspension of bottom sediments.” NNYB 401 WQC Condition 59. It is thus clear from the plain terms of the NNYB 401 WQC that any project activities that may cause resuspension of bottom sediments must meet the water quality standards specified in Permit Condition Number 61. This table was modified by the July 3, 2014 water quality monitoring permit modification, and specifies that the binding and enforceable water quality standard for turbidity is “No increase that will cause a substantial visible contrast to natural conditions.” July 3, 2014 Permit Modification (*see* Exhibit 2), page 3.

On the dates listed below, a private airplane pilot undertook aerial patrols of the Hudson River, including the area of the New NY Bridge Project. Photographs of the project area demonstrate numerous dates on which project activities have caused resuspension of bottom sediments and enormous discharges of highly turbid water that have caused substantial visible contrasts to the natural conditions of the estuary. Many of these discharges appear to extend well beyond any applicable mixing zone, in violation of the requirements of the NNYB 401 WQC. Such violations have occurred at or around the New NY Bridge Project on at least the following dates:

Date	Representative Photos
9/9/13	Exhibit 3
8/6/14	Exhibit 4
7/3/15	Exhibit 5
8/5/15	Exhibit 6

¹ *See, e.g.*, NNYB 401 WQC ¶¶ 16, 25, 27, 72.

8/25/15	Exhibit 7
9/23/15	Exhibit 8
10/8/15	Exhibit 9
10/14/15	Exhibit 10

Violations of Section 301(a) of the Clean Water Act

As previously noted, the requirements of the NNYB 401 WQC are incorporated by reference as conditions of the NNYB Section 404 Permit. Thus, because the NYSTA has not been operating in compliance with the NNYB 401 WQC, it is also violating the NNYB Section 404 Permit.

CWA § 301(a) states, “[e]xcept as in compliance with this section and section [. . . 404] of this [Act], the discharge of any pollutant by any person shall be unlawful.” As described above, the NYSTA is not in compliance with the NNYB 401 WQC or the NNYB Section 404 Permit, and therefore any discharges of any pollutants have been and continue to be unlawful under CWA § 301(a). Since the subject dredging operations constitute discharges of pollutants, they constitute violations of CWA § 301(a) as well. In addition, construction related activities and vessel movements cause the suspension of dredged materials in the form of river bottom sediments which are then discharged into the waters of the Hudson River in violation of Clean Water Act section 301(a). These sediment-suspending vessel movements have taken place on a daily basis since commencement of bridge construction activities in 2012, have continued on a daily basis during 2013, 2014, and 2015, and are continuing.

RELIEF SOUGHT

This letter gives 60 days notice of Riverkeeper’s intent to seek (1) injunctive relief enjoining future violations of the permits and the CWA pursuant to 33 U.S.C. § 1365(a); (2) civil penalties pursuant to 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4; and (3) an award of Riverkeeper’s litigation costs and attorney fees pursuant to 33 U.S.C. § 1365(d).

SUMMARY

The above-referenced violations, in addition to any future similar violations, constitute violations of the CWA.

This Notice of Intent to Sue sufficiently states the grounds upon which Riverkeeper intends to file suit and notifies all required parties. *See* 40 C.F.R. part 135. The failures of the NYSTA and Tappan Zee Constructors to comply with the above-referenced legal requirements constitute continuing and ongoing violations of the CWA. Each day of project activities not in compliance with NYSDEC’s permit constitutes a series of separate

violations under applicable regulations, and the NYSTA will remain in violation until all such permit violations permanently cease.

At the close of the 60-day notice period, we intend to file a citizen suit against the NYSTA and Tappan Zee Constructors, LLC, as permittee and contractor, respectively, responsible for the violations of law described herein around Hudson River Mile 27 in connection with the New NY Bridge Project adjacent to the existing Tappan Zee Bridge, and for all similar violations that have occurred or that may occur after your receipt of this notice letter. We intend to seek injunctive relief, civil penalties, attorneys' fees, and litigation costs for each of these violations.

During the 60-day notice period, we will be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue a settlement, we suggest that you initiate discussions within ten days of receiving this notice so that a meeting can be arranged and negotiations may be completed before the end of the notice period. Please do not hesitate to contact us at (914) 422-4343 if you wish to discuss these matters.

Very truly yours,



Karl S. Coplan
Daniel E. Estrin
Briana Costa, Legal Intern
Lauren Fitton, Legal Intern
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78 North Broadway
White Plains, New York 10603
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CC (via certified mail - return receipt requested):

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Loretta E. Lynch, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Judith A. Enck, Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Basil Seggos, Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Matthew J. Driscoll, Commissioner
New York State Department of Transportation
50 Wolf Road
Albany, NY 12232



SECTION 401 WATER QUALITY CERTIFICATION

The Department of Environmental Conservation hereby certifies that the Authorized Activity, when conducted in compliance with permit conditions, will comply with effluent limitations and standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217).

NET CONSERVATION BENEFIT

By letter dated June 25, 2012, the Permittee provided an Endangered and Threatened Species Mitigation Plan. By letter July 23, 2012 the Permittee submitted an Implementation Plan. Each plan fulfills the requirements of 6 NYCRR §182.11(d).

Within 120 days of the effective date of this permit (except as identified in C, below) the Permittee must submit to the Department for its approval refinements to these plans, including final details, schedule, and execution program, as outlined below. These final details are to be developed in collaboration with the Department.

Carrying out the Authorized Activity in conformity with the conditions of this Permit and executing the final Endangered and Threatened Species Mitigation Plan as outlined below – and as finalized in collaboration with, and approved by, the Department – will result in a Net Conservation Benefit to the shortnose and Atlantic sturgeon of the Hudson River.

The Endangered and Threatened Species Mitigation Plan will consist of the following:

- A. Mapping of Hudson River shallows less than four meters deep to document benthic habitat used by Atlantic and shortnose sturgeon. Mapping will extend from the Troy Dam south to New York Harbor, and will use techniques consistent with those used by the NOAA Coastal Services Center to map the shallows from Saugerties north to the Troy Dam. The mapping effort may omit the Saugerties to Troy Dam river stretch if the new data can be integrated with the NOAA data into a seamless digital product that can be viewed by general public users. To support and illuminate the sturgeon-related mitigation actions that follow, this work must be completed *within two years of the effective date of the Permit*.
- B. A study of sturgeon foraging habits using gastric lavage to obtain gut contents in order to link sturgeons' diet to benthic habitats. Twenty to thirty of each life stage and species described below are to be lavaged; these fish will not be tagged with sonic tags. Biological characteristics (length and weight) will be collected; a PIT tag will be applied to each fish prior to release.



Progress reports will be submitted to the Department on a schedule to be developed, with data files, numbers of fish caught, tagged or lavaged, and a summary of work to present, including progress in stomach content analyses and/or fish tracking data.

- G. Development and implementation of an outreach campaign, designed in collaboration with, and approved by, the Department, directed at the commercial fishing industry with the goal of reducing the impact of commercial by-catch of Atlantic sturgeon in the near shore Atlantic Ocean.

MITIGATION

Within ninety days of the effective date of this Permit the Permittee will submit to the Department for its review and approval a Compensatory Mitigation Plan for dredging-related impacts to the benthic community, tidal wetlands and open water community, and plant and animal species utilizing these resources. The final plan will be developed in collaboration with the Department consistent with the Department's July 3, 2102 letter to counsel for New York State concerning the Mitigation Proposal. Upon Department approval Permittee shall implement the Compensatory Mitigation Plan in accordance with the schedule in the approved plan.

The Compensatory Mitigation Plan will include the following:

- A. Oyster Restoration - Permittee will re-establish 13 acres of hard bottom/shell oyster habitat.
- i. In collaboration with the Department, the Permittee will seek to harvest local oysters and historic reef materials from the dredge zone and stockpile these for subsequent habitat re-establishment.
 - ii. Habitat re-establishment will occur as soon as possible following construction, and shall take place in the vicinity of the new bridge.
 - iii. The habitat will be created using native materials to the maximum extent practicable, supplemented as necessary, resulting in a density and pattern of distribution commensurate with that removed in the course of bridge construction. While it's assumed that collecting a live oysters from a nearby reef and conveying them to a marine oyster hatchery to be raised, spawned, and cultured will provide the brood stock to re-establish the oyster reef; Permittee may propose alternative measures.
 - iv. All details of the oyster restoration, including the location of the restored habitat, identification of the sources for shell/non-shell material, and the location where broodstock will be cultured, will be developed in collaboration with the Department.



from 90% of the project area while minimizing damages to native vegetation. Maintenance spraying will be performed over a five-year period as needed.

- iii. The oxbow in Crumkill Creek in the central area will be restored along with historic flow regimes of the creek channel by the one-time placement of a small amount of fill in the existing by-pass, diverting flow into the historic oxbow.
- iv. The Permittee shall design and implement a green infrastructure project intended to improve the quality of stormwater entering Sparkill Creek, and will monitor this project for a period to be decided between the Department and Permittee.
- v. The Permittee will assess the feasibility of restoring historic wetlands in an area at the northern end of Piermont Marsh through removal of landfill materials and restoration of the native marsh community. As part of the assessment, the Permittee will conduct baseline studies of existing plant and animal communities, sample and analyze sediment contaminants in the former landfill area, and determine the costs of landfill material and sediment removal and disposal.

The Permittee will prepare annual monitoring/progress reports and within six months of project completion submit a final report documenting the restoration process, interim conditions and outcomes, final conditions and outcomes, and recommendations for ongoing management and future restoration projects.

- D. Supplemental Habitat Replacement or Enhancement - *Within one year of the effective date of this Permit*, and after consultation with the Department, the Permittee will submit to the Department for its review and approval a plan for supplemental compensatory mitigation projects which have a total capital cost of \$2 million. Permittee shall implement the projects *within seven years of approval of the supplemental mitigation plan*.

PERMIT CONDITIONS

PROJECT PLANS

1. The Pile Load Testing Program, also known as the Pile Installation Demonstration Program 2 (PIDP 2), in Authorized Activity item 1, above, must be conducted in substantial conformity with the program description and drawings provided in a December 28, 2012 letter from Elizabeth Novak of NYSTA to John Ferguson of this Department as supplemented by a letter submitted on her behalf dated March 21, 2013. *At least 30 days before starting the Pile Load Testing Program* the Permittee must give the Department a current program description and drawings showing the work to be done.



- (3) Method of reporting to the Department non-compliance with permit conditions and NYS Environmental Conservation Law;
 - (4) QA/QC procedures for environmental compliance.
6. The work identified in Authorized Activity item 2 above may start when the Department has given written approval of the Environmental Compliance Plan.

TEMPORARY AND PERMANENT PLATFORMS AND BULKHEAD

7. *At least 30 days before work begins on the construction of temporary or permanent platforms, or bulkheads, the Permittee must submit final plans for same to the Department. The plans must specify the number, location and diameter of all piles supporting the platforms and piers to be installed in the Hudson River; and the dimensions and height above mean low water of the deck of each platform.*

PILE DRIVING

8. The results of sound attenuation tests conducted during the 2012 Pile Installation Demonstration Program (PIDP); and any additional test results from underwater sound attenuation studies during the 2013 PIDP2 will be used to determine the most effective underwater sound attenuation system. An underwater sound attenuation system or systems must be deployed during driving of steel piles four feet and larger in diameter to minimize to the maximum extent practicable the effects of underwater sound upon fishes in the Hudson River.
9. *At least 30 days before starting installation of permanent piles four feet in diameter or more within each specific in-river design unit (as identified in the March 21, 2013 letter) the Permittee must give the Department design plans and operational specifications for the underwater sound attenuation system for that design unit. Except for piles installed during the 2013 PIDP2, installation of piles four feet and larger in diameter may begin when the Department has given written approval of the underwater sound attenuation system for each in-river design unit. Upon Department approval the final sound attenuation plan will be posted on the project website maintained by the Permittee.*
10. The underwater sound attenuation system may be incorporated into falsework structures and the containment boom required by Condition 15, below.
11. The underwater sound attenuation system must include monitoring of underwater sound during installation of piles four feet in diameter or more, and must verify that the system is deployed and operating in accordance with design specifications.
12. Pile driving may be conducted from 7AM to 7PM only.



23. Dredging must be conducted using a closed clamshell dredge. Drawings and specifications of the closed clamshell bucket and other dredging equipment, including specifications demonstrating that appropriate design considerations are incorporated in the equipment, must be provided to the Department at least 45 days before dredging related activities start.
24. The bucket must be lifted in a continuous motion through the water column and into the barge. Bucket decanting and loss of dredged material into the River during barge loading will be minimized to the maximum extent practicable.
25. Dredging equipment must be operated in a manner that minimizes the resuspension of sediments in the Hudson River. Dredging operations may not cause turbidity that results in a substantial visible contrast to the Hudson River outside of the 500 foot mixing zone as set forth in the Water Quality Monitoring section below.
26. Best management practices include lowering the bucket to the level of the barge gunwales prior to release of the load and placing the dredged material in the barge in a controlled manner. Excessive loss of material from the bucket should be investigated and repaired. Bucket retrieval rates will be controlled to minimize turbidity.
27. If decanting of barges is necessary, a detailed plan must be submitted to the Department for review and approval before decanting may start.

The following will apply if dewatering is approved by the Department:

 - A. The overlying water in the barge may be pumped to the water column after 24 hours of settling.
 - B. Decanting of the barge shall be conducted in a manner that precludes adding substantial suspended solids, turbidity or sheens to the receiving water body. During pumping of the decant water, great care shall be taken to avoid re-suspending or pumping previously settled sediment.
 - C. A flocculent may be added to enhance settling. If a flocculent is proposed to be used, the form "Water Treatment Chemical Usage Notification Requirements for SPDES Permittee" must be submitted and approved by DEC prior to its use.
 - D. Decanting activities may not cause turbidity that results in a substantial visible contrast to the Hudson River outside of the 500 foot mixing zone as set forth in the Water Quality Monitoring section below. In the event that this requirement is exceeded, the Department will be notified and an evaluation of the adequacy of the holding time and/or the need to add a flocculant to aid in settling shall be undertaken by the Permittee.
28. All side slopes of the dredged channel will have a maximum 1:3 slope.



The plan will include at minimum the following components:

- A. *As soon as possible, but no more than 60 days after the effective date of this Permit*, and before starting installation of permanent piles four feet or more in diameter, and prior to the commencement of dredging, the Permittee will have in place an operational-capable array of stationary receivers capable of detecting sonic tags in the vicinity of any Authorized Activities. These receivers may include those currently used by the NYSDEC (LOTEK MAP, and LOTEK dual mode) and those used by other coastal researchers (VEMCO).

Receivers must be range tested in the field and placed in such a way that fish in the vicinity of the bridge and the construction zone north of the existing bridge, can be detected by at least three receivers.

Data downloads shall occur every 60 days at minimum including GPS coordinates of each receiver location to verify the location of each remote receiver. Following each data download, a report shall be submitted with data files, and a summary of fish present and /or moving through the construction zone.

41. The Permittee must survey the project area (River Mile 27) daily during driving of permanent piles and dredging for the purpose of locating stunned or dead fish. An Standard Operating Procedure (SOP) detailing the procedures for this survey must be submitted to the Department for approval as soon as practicable, but at least 30 days before starting dredging or installation of permanent piles four feet or more in diameter.
42. All live stunned or injured sturgeon shall be placed in a holding tank onboard a survey vessel and transported outside the area ensonified by pile driving. The sturgeon shall be measured for total length, identified to species, examined for a Passive Integrated Transponder (PIT) tag, and if untagged, the sturgeon will be marked with a PIT tag applied in the flesh below the base of the dorsal fin (left side), then released. Application of the PIT tag will follow the procedures as outlined in the NMFS protocol.
43. Necropsies shall be performed on any dead sturgeon collected. After completion of the necropsy all dead sturgeon must be placed on ice and held for delivery to the Department. After collection of a dead Shortnose or Atlantic sturgeon the Permittee shall contact the Department's Hudson River Fisheries Unit Leader during the following DEC work day for delivery procedures.
44. *Within 90 days of the effective date of this Permit*, the Permittee must submit detailed procedures for the necropsies, which identifies the contractor that will perform the necropsies and the location of the laboratory where the necropsies will be performed.



PEREGRINE FALCON

55. The Permittee must minimize disturbance to Peregrine Falcons during all phases of the bridge replacement project. All activities must maintain the maximum distance from the peregrine falcon nest on the existing bridge as practical. No less than 30 days before starting the Authorized Activity the Permittee must submit a plan for protection of the falcon nest to the Department.
56. Any upland blasting must be approved in writing by the Department and must avoid impacts to nesting peregrine falcons.
57. The Permittee must evaluate Peregrine Falcon nesting activity during each year of construction and demolition to determine if a pair is active on the territory, are nesting, and the success of that nest. Any reports of impacts to the nest should be reported to the Wildlife Manager at the NYS DEC Region 3 Headquarters in New Paltz, NY.
58. A Peregrine Falcon nest box must be installed on the new bridge between September 1 and January 31 in any calendar year, when construction is finished and before demolition of the old bridge. The design and location of the nest box on the new structure must be approved by the Department.

WATER QUALITY MONITORING

59. *At least 45 days before starting dredging activities; decanting activities; removal of large debris fields; pile driving in zone C; channel armoring; cofferdam construction; removal of the existing bridge; or any activity that may cause resuspension of bottom sediments, Permittee must submit a water quality monitoring plan to the Department. If activities occur concurrently in multiple locations, each activity that may cause resuspension of bottom sediments must be monitored separately. The Plan must be in effect at all times during these activities. The above activities may start when the Department has given written approval of the plan.*
60. The plan shall include monitoring for total suspended solids (TSS), turbidity (visual monitoring) and the following contaminants: total mercury, dissolved nickel, copper, lead, zinc, PCB and naphthalene and benzo(a)pyrene. The plan must: (i) describe procedures for background sampling, and sampling at the edge of a 500-foot mixing zone around the activities identified in condition 59, above (ii) include daily sampling during each tidal cycle; (iii) use an Acoustic Doppler Current Profiler to locate the plume; (iii) require whole water samples in the vertical water column (from at least 3 depths) along a transect within the plume; and (iv) include upstream transect. When silt curtains are deployed, monitoring should take place immediately outside the confines of the silt curtain.
61. The following Water Quality Standards must be achieved immediately outside of the silt curtain or at the edge of the 500-foot mixing zone around the activities identified in condition 59, above,



river Authorized Activity water quality monitoring for contaminants for that activity may be reduced. Daily TSS and turbidity monitoring must continue through the duration of the in-river operation. If during the reduced sampling, there is an exceedance of 100 ppm above ambient TSS value, monitoring shall return to daily for all parameters until such time as TSS concentrations are less than 100 ppm above ambient values.

65. Three copies of a monitoring report, summarizing the results of the monitoring and analyses, shall be submitted to the Department within 30 days of completion of the in-river Authorized Activity in any calendar year.
66. All laboratory analyses required by this permit must be conducted by a laboratory certified by the New York State Department of Health.
67. Nothing contained in this Permit shall be construed as authorizing a violation of Water Quality Standards.

ROCK DRILLING DEWATERING CONDITIONS

68. All decant water-holding scows must be water tight and of solid hull construction.
69. Decant water must be discharged within the confines of the silt curtain containment area surrounding the rock drilling operation.
70. All decant water must be held in the decant-holding scow for a minimum of 24 hours.
71. During pumping of the decant water from the holding scow, care shall be taken to avoid re-suspending or pumping sediment which has previously settled in the scow.
72. Discharge of decant water into the silt curtain containment area shall not cause turbidity that results in a substantial visible contrast to the Hudson River as set forth in the Water Quality Monitoring section above. In the event this requirement is exceeded, the Department will be notified and an evaluation of the adequacy of the holding time and/or the need to add a flocculent to aid in settling of solids in the scow shall be undertaken by the Permittee. Addition of a flocculent requires Department approval and the completion of the form "Water Treatment Chemical (WTC) Usage Notification Requirements for SPDES Permittee".

GENERAL CONDITIONS – APPLICABLE TO ALL PERMITS

73. FACILITY INSPECTION BY THE DEPARTMENT

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department to determine Permittee's



- d. Newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the permit.
- e. Noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

ITEM A: PERMITTEE ACCEPTS LEGAL RESPONSIBILITY AND AGREES TO INDEMNIFICATION

The Permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the Permittee's acts or omissions in connection with the Permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

ITEM B: PERMITTEE'S CONTRACTORS MUST COMPLY WITH PERMIT

The Permittee is responsible for informing its contractors, employees, agents and assigns of their responsibility to comply with this permit, including all conditions, while acting as the Permittee's agent with respect to permitted activities. Said parties are subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the Permittee.

ITEM C: PERMITTEE RESPONSIBLE FOR OBTAINING OTHER REQUIRED PERMITS

The Permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way necessary to carry out the activities authorized by this permit.

ITEM D: NO RIGHT TO TRESPASS OR INTERFERE WITH RIPARIAN RIGHTS

This permit conveys no right to the Permittee to trespass upon the lands of, or interfere with the riparian rights of others. It authorizes no impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.



EXHIBIT 2

New York State Department of Environmental Conservation
Division of Environmental Permits, 4th Floor
625 Broadway, Albany, NY 12233-1750
Phone: (518) 402-9167 • **Fax:** (518) 402-9168
Website: www.dec.ny.gov



July 3, 2014

Peter Sanderson, Project Director
The New NY Bridge
NYS Thruway Authority
303 South Broadway, Suite 413
Tarrytown, NY 10591

Re: DEC Permit 3-9903-00043/00012
Permit Modification - Water Quality Monitoring

Dear Mr. Sanderson:

This responds to your May 6, 2014 letter to me requesting modification of the subject permit. Subsequent discussions between Department and Thruway Authority staff resulted in changes to your original request that were agreeable to the Authority and the Department.

A notice announcing the modifications established in those discussions was published in the Department's June 18, 2014 *Environmental Notice Bulletin*. The final changes alter the scope and frequency of water quality monitoring during aspects of the bridge's construction.

For some activities whole water sample collection for contaminant analysis will be reduced or eliminated and the frequency of sample collection for total suspended solids analysis will be reduced. The proposed monitoring adjustments are supported by the sampling results collected during the first year of construction activities.

These data confirm that bridge construction activities have had no contaminant-related impacts on water quality. Accordingly, the subject permit is hereby modified as follows:

DREDGING

27. A. The overlying water in the barge may be pumped to the water column after 12 hours of settling.

BRIDGE DEMOLITION

Contaminant	Water Quality Standard (ppb)	Detection Limit * (ppb)
Total Mercury	0.0007-H(FC)	0.050
Dissolved nickel	8.2-A(C)	
Dissolved copper	5.6-A(C)	
Dissolved lead	8.0-A(C)	
Dissolved zinc	66-A(C)	
PCB	1.0x10 ⁻⁶	
Aroclor 1242		0.2
Aroclor 1248		0.2
Aroclor 1254		0.2
Aroclor 1260		0.2
Naphthalene	16	
Benzo(a)pyrene	0.0006	0.1
TSS	None from sewage, industrial waste or other wastes that will cause deposition or impair the waters for their best usages.	100 mg/L above ambient
Turbidity	No increase that will cause a substantial visible contrast to natural conditions.	

** Using EPA analytical method with the lowest possible detection limit as promulgated under 40CFR Part 136.*

62. All analytical results must be sent to DEC by fax or email within 48 hours of receipt of data results, followed by a mailed hard copy. Exceedances should be highlighted.

63. In the event of exceedance of a water quality standard, the Department will be notified and the Permittee and the Department will determine if there is a need for procedural changes.

64. Water quality monitoring must be conducted daily (every day the activity occurs) at the

with the project contractor and appropriate personnel.

If you have any questions please contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "John J. Ferguson", with a long horizontal flourish extending to the right.

John J. Ferguson
Chief Permit Administrator

ecc: Kristine Edwards, New NY Bridge NYSTA
Ken Avery, IOECM, New NY Bridge
David Paget, Sive Paget & Riesel
Thomas Berkman, NYSDEC
Karen Woodfield, NYSDEC
Diane English, NYSDEC
Thomas Rudolph, NYSDEC

EXHIBIT 3

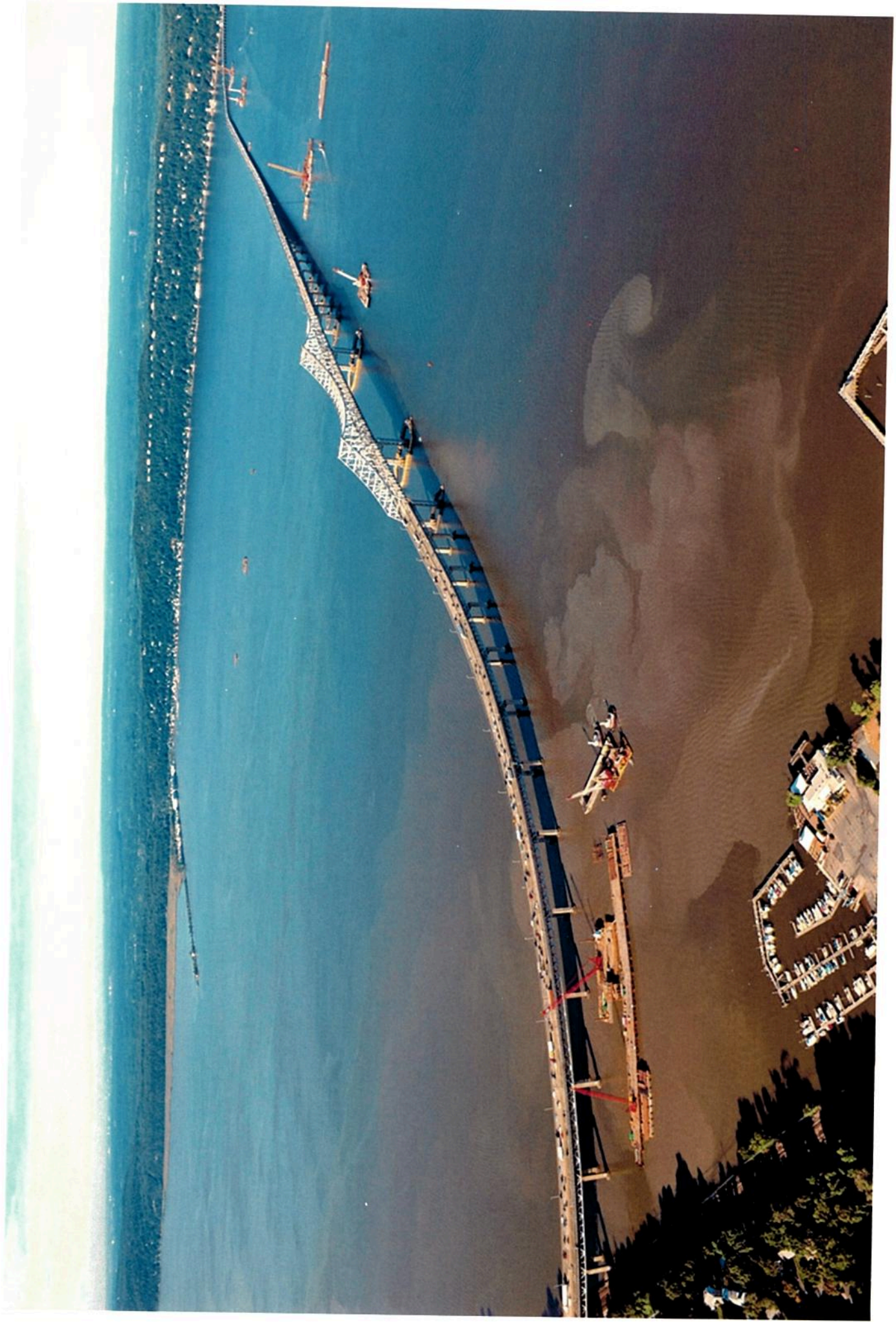


EXHIBIT 4

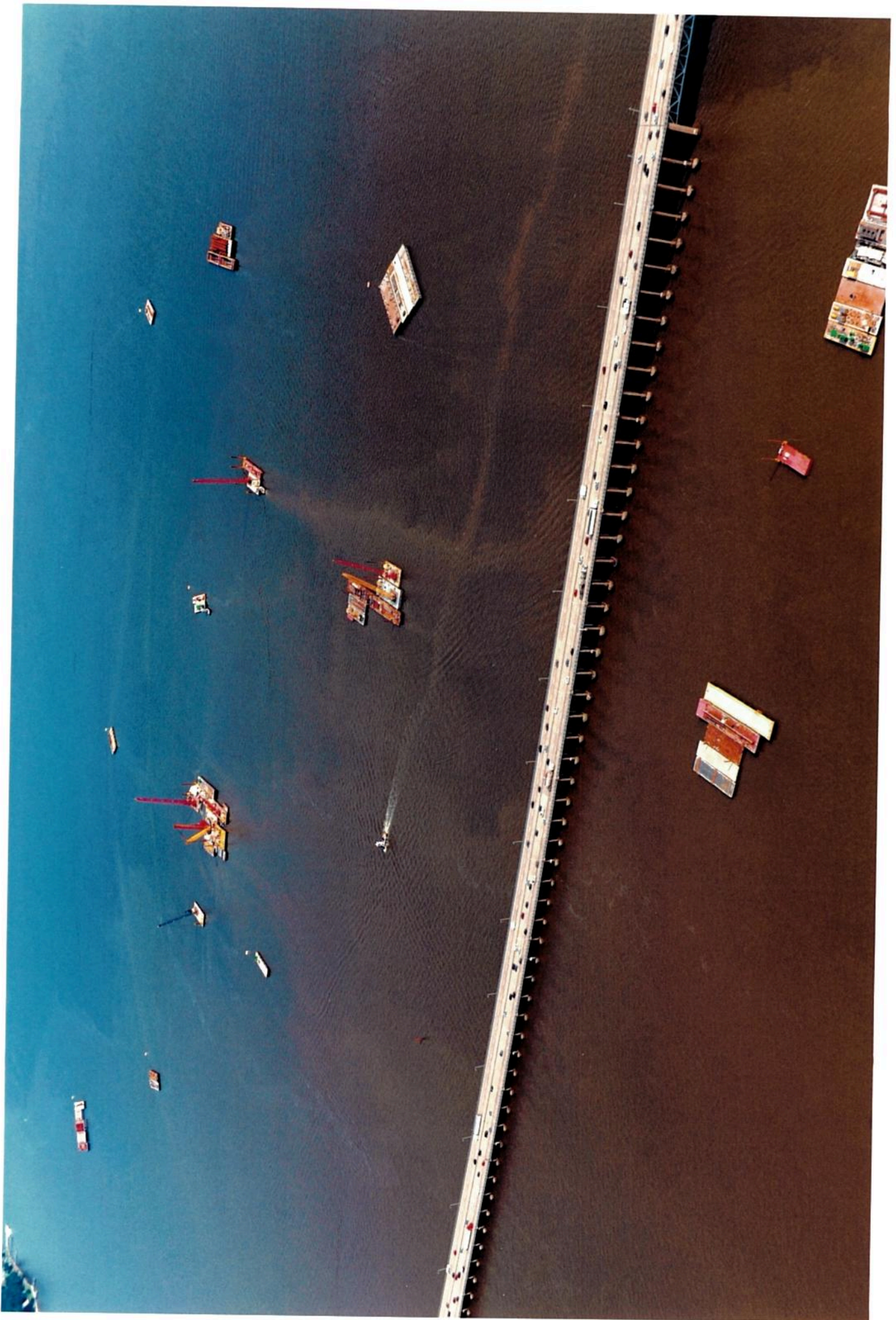


EXHIBIT 5

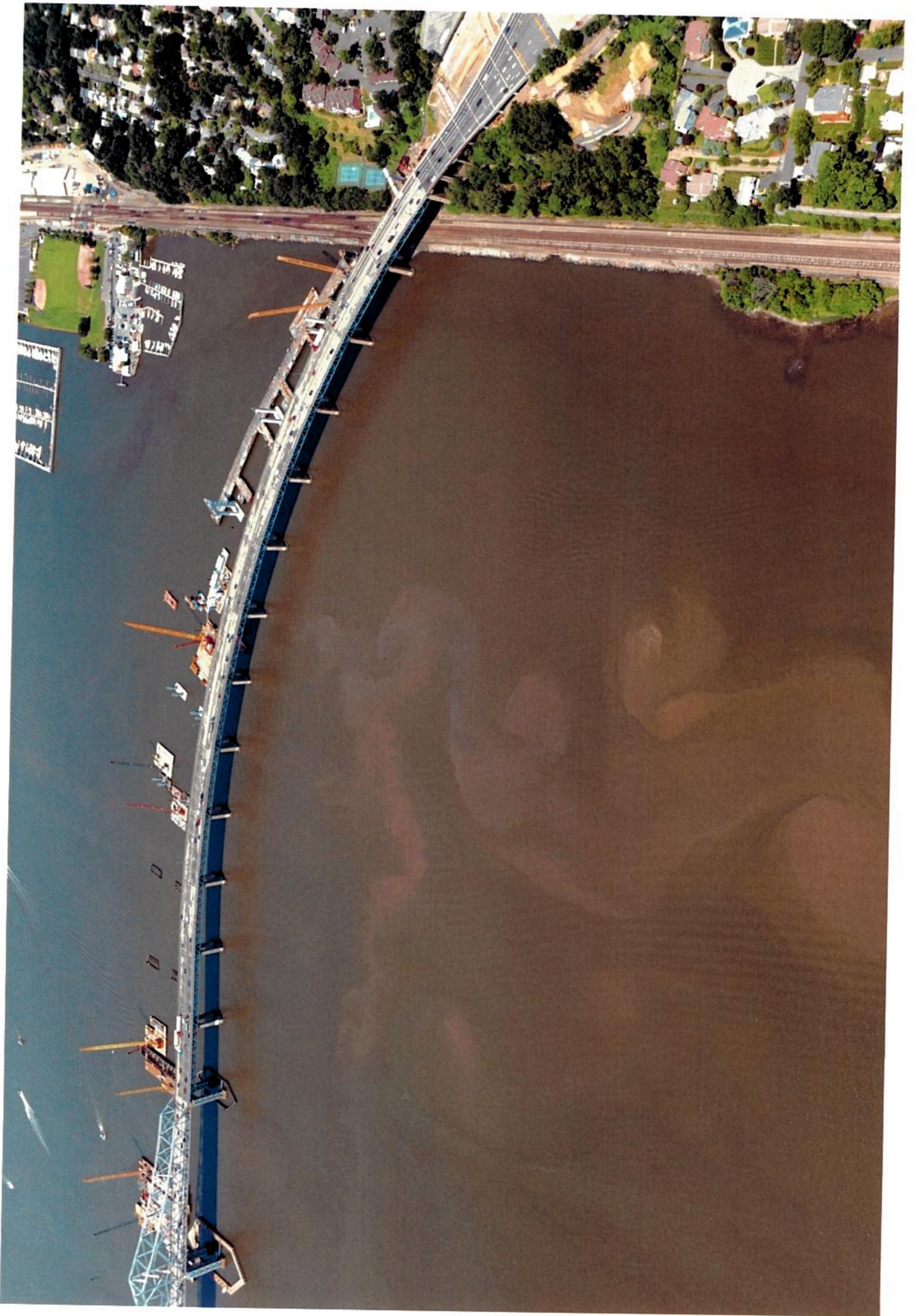


EXHIBIT 6



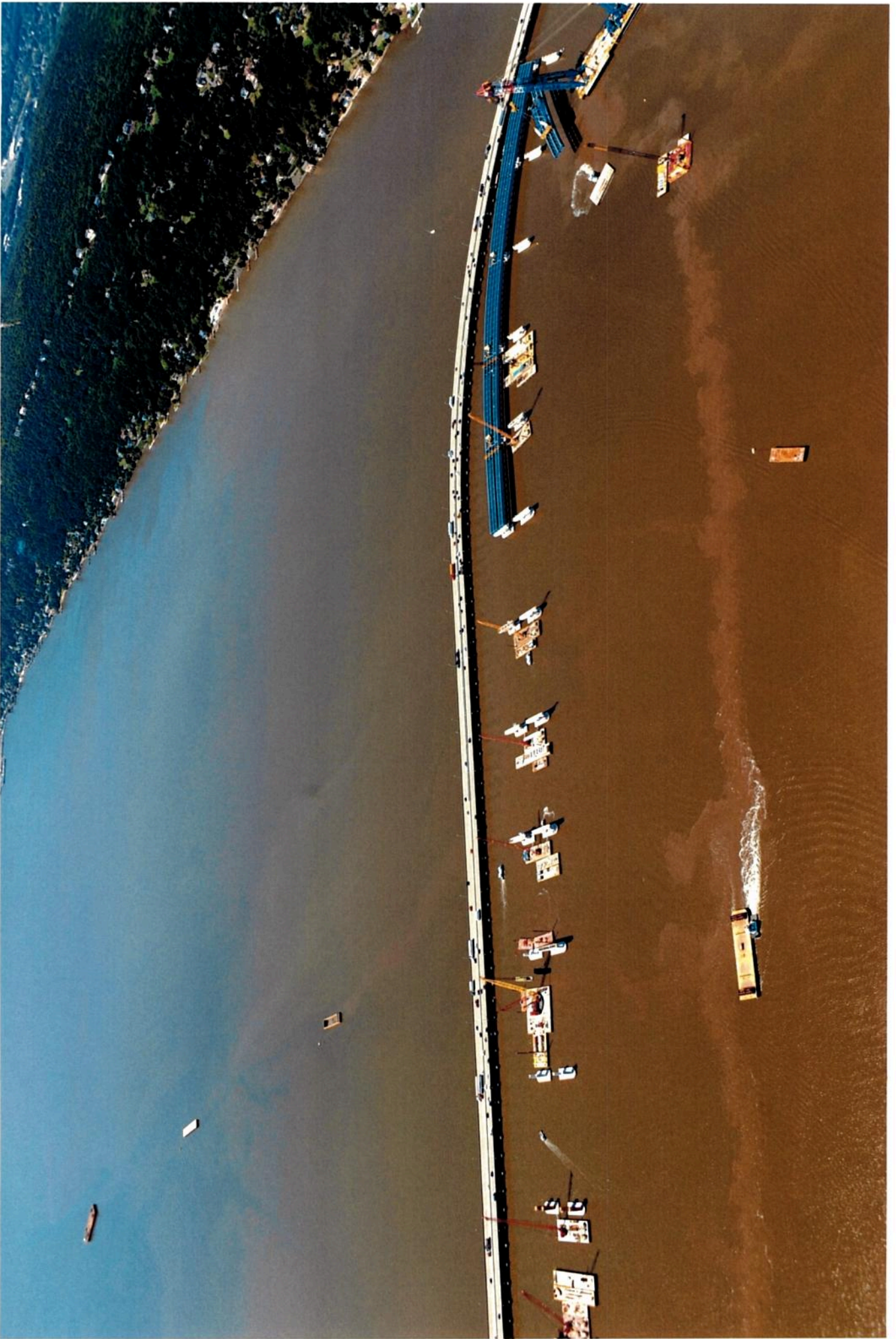


EXHIBIT 7



© Aerial Photography by *Rosepilot*

Aug 25 2015

EXHIBIT 8



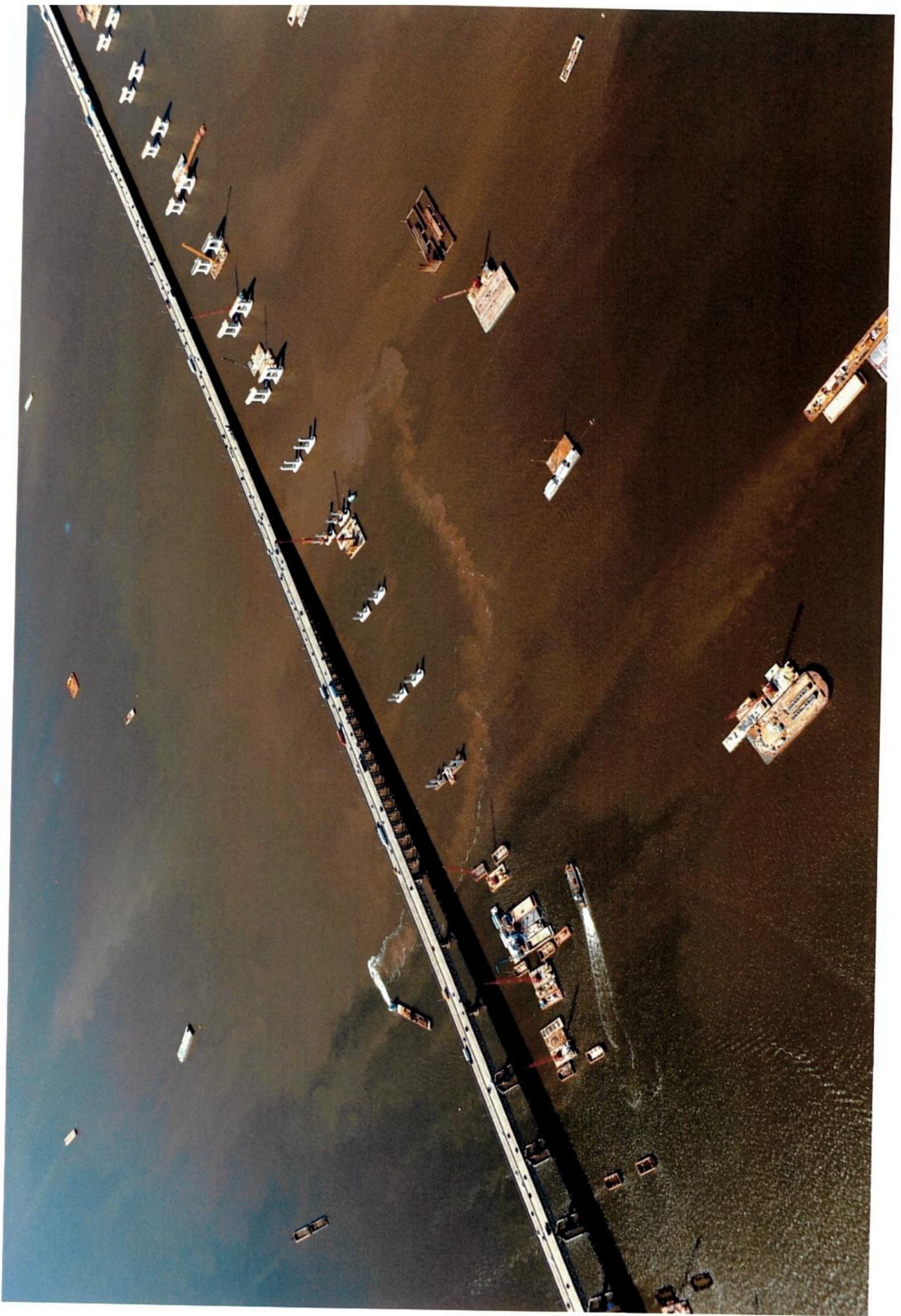


EXHIBIT 9

